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Request of Northern Illinois Gas Company)
d/b/a Nicor Gas Company for a Declaratory)
Ruling Concerning the Duration of Rider 4,)
Gas Cost Performance Program)

CHIEF CLERK'S OFFICE

Docket No. 01-0448

REQUEST FOR DECLARATORY RULING

NOW COMES Northern Illinois Gas Company, d/b/a Nicor Gas Company ("Nicor Gas" or "Company"), pursuant to Section 200.220 of the Commission's Rules of Practice, 83 Ill. Adm. Code 200.220, and requests a declaratory ruling that, (1) Nicor Gas' Rider 4, Gas Cost Performance Program ("Program"), as currently in effect, will remain in effect throughout calendar year 2002, or (2) if changes to the Program are ordered by the Commission after completion of the Commission's review of the Program, as required by Section 9-244(c) of the Public Utilities Act ("the Act"), and (i) are accepted by the Company, such changes would become effective January 1, 2003, or (ii) are not accepted by the Company, that the Program will be measured for 2002 using a full calendar year, with results prorated based on the number of full months the Program remained in effect during 2002.

Because the Company is currently making gas supply arrangements for service to its customers during 2002, Nicor Gas asks that the Commission grant its request for declaratory ruling on an expedited basis and, in any event, prior to September 1, 2001, without hearing.¹ For the convenience of the Commission, a proposed order that would grant Nicor Gas' request is attached as Exhibit A.

¹ Section 200.220(h) of the Commission's Rules, 83 Ill. Adm. Code Part 200.220(h), authorizes the Commission to rule on a request for a declaratory ruling based solely upon written submissions.

In support of its request for declaratory ruling, Nicor Gas states as follows:

I. SUMMARY

Nicor Gas was authorized to implement Rider 4, Gas Cost Performance Program, effective January 1, 2000, by Commission order dated November 23, 1999, in Docket No. 99-0127. As required by Section 9-244(c) of the Act, the Commission must open a proceeding to review the Program two years after its implementation and must issue an order within 270 days of initiating the Program review. While the precise date is uncertain, the Commission's post-review order will likely be issued sometime during calendar year 2002. However, much of the data and many of the calculations used to measure results under the Program are determined on a calendar year basis, meaning that a Commission order requiring mid-year changes to the Program could result in a subjective or meaningless calculation of Benchmark gas costs and actual gas costs. Mid-year changes might also require the Company to base future calculations on a fiscal rather than a calendar year, which would even further reduce calculations to subjective judgements required to measure results under the Program. Moreover, actual gas costs used in measuring Program results are those included in annual PGA filings, and calculation of the Benchmark and actual gas costs on other than a full calendar year basis would therefore necessitate use of estimated data based on subjective judgements.

In order to avoid use of unnecessarily complicated and subjective calculations to measure Program results, and to maintain its symmetry with the Company's PGA filings, Nicor Gas requests that the Commission grant this request for declaratory ruling and determine that the existing Program will remain in effect, without change, throughout calendar year 2002.

In the alternative, the Company requests that the Commission issue a declaratory ruling that, upon completion of the required review, (i) any modifications to the Program ordered by the Commission and accepted by the Company will become effective January 1, 2003, and (ii) if the Company does not accept changes to the Program ordered by the Commission, that the Program will be measured using a full calendar year, with the results to be prorated over the number of full months the Program remained in effect during 2002 prior to issuance of the Commission's post-review order.

II. FACTUAL BACKGROUND

A. Relevant Parties

Nicor Gas is an Illinois corporation with its General Office at 1844 Ferry Road, Naperville, DuPage County, Illinois 60563-9600. It is engaged in the business of distributing and selling gas to more than 1,950,000 customers in the northern part of Illinois, and is a public utility within the meaning of the Act.

The Company has provided notice of this Request for Declaratory Ruling on persons on the service list for Docket No. 99-0127, the proceeding in which the Commission approved the Company's Program.

B. Rider 4, Gas Cost Performance Program

On March 1, 1999, Nicor Gas filed with the Commission a petition seeking approval of an alternative rate regulation program for gas costs under Section 9-244 of the Act. After extensive hearings, the Commission approved the Company's request, as modified by the Commission, to be effective January 1, 2000. In a nutshell, the Program compares the Company's actual gas supply costs for a full calendar year with a Commission-determined Benchmark calculated on the basis of the same full calendar

year. If the Company's actual gas costs are below the Benchmark, savings are shared 50-50 with customers. Conversely, if the Company's actual gas costs exceed the Benchmark, any excess is also shared 50-50 with customers, meaning that the Company's shareholders absorb half of any excess costs.

Pursuant to the Commission's order in Docket No. 99-0127, the Benchmark is the sum of four components. First, the Market Index Cost is comprised of each month's market index price multiplied by sales delivery volumes, summed over the 12 months of the calendar year. Second, the Storage Credit Adjustment is the difference between the weighted average market index price of injections and the weighted average market index price of withdrawals, times actual withdrawal volumes for sales customers in the calendar year. Third, the Commodity Adjustment is \$0.00168 per therm for each therm of Company-owned gas delivered to customers during the calendar year. Fourth, the Firm Deliverability Adjustment is \$116,582,612 each calendar year.

For the Commission's convenience, a copy of Rider 4, Gas Cost Performance Program, is attached as Exhibit B.

C. Commission Review of the Program

As provided for in Section 9-244(c) of the Act, the Commission is required to open a proceeding to review the Program two years after its implementation. The Company therefore anticipates that the Commission will initiate review of the Program in early 2002. Section 9-244(c) also provides that the Commission must issue its order within 270 days after commencing the review. As a result, a post-review order will likely be issued sometime during 2002. Depending on when the order is issued, and when any changes ordered by the Commission and accepted by the Company are to become

effective, it is possible, absent issuance of a declaratory ruling by the Commission, that the current Program could be effective for only part of 2002, with a modified program effective for the remainder of the year. If the Company elects not to accept post-review changes ordered by the Commission, the Program could only be in effect for part of 2002, and an allocation of costs and revenues would be needed. The objective of this request for declaratory ruling is to establish guidance in advance of the Commission's review so as to avoid unworkable and unintended results.

As required by Section 200.220 of the Commission's Rules of Practice, 83 Ill. Adm. Code 200.220, Exhibit C to this request for declaratory ruling contains a verification by Mr. George M. Behrens, Vice President of Nicor Gas, attesting to the truthfulness of the above facts and other factual representations contained in this request.

III. CONCISE STATEMENT OF THE CONTROVERSY OR UNCERTAINTY THAT IS THE SUBJECT OF THIS REQUEST

Section 9-244(c) of the Act provides, in relevant part:

The Commission shall open a proceeding to review any program approved under subsection (b) 2 years after the program is first implemented to determine whether the program is meeting its objectives, and may make such revisions, no later than 270 days after the proceeding is opened, as are necessary to result in the program meeting its objectives. A utility may elect to discontinue any program so revised.

Under this provision of the Act, the Commission will likely issue a post-review order before the end of calendar year 2002. However, as noted above and more fully explained below, many of the components of the Benchmark used to measure Program results require use of information based on data for a full calendar year. Nicor Gas submits that the best means of avoiding calculation complexities and subjective judgement is to continue the existing Program, without change, through the end of 2002, and the Company requests issuance of a declaratory ruling to that effect. As an

alternative, Nicor Gas requests that the Commission issue a declaratory ruling specifying that any Program changes ordered by the Commission and accepted by the Company will be effective January 1, 2003, or if the Company does not accept Commission-ordered changes to the Program, that the Program will be measured using a full calendar year of 2002 with results being prorated over the number of full months during 2002 that the Program was in effect prior to issuance of the Commission's post-review order.

IV. ARGUMENT

A. Potential Commission Order's Impact on Program Measurement.

Under Section 9-244(c), the Commission could issue an order initiating Program review proceedings as early as January 1, 2002 in which case any order modifying the Program would have to be issued by October 1, 2002. Of course, the issuance and decision dates could vary from these broad outlines. Consequently, absent issuance of a declaratory ruling, it is impossible for anyone to know when an order modifying the Program would become effective. For example, the Commission could issue an order in the middle of 2002, with modifications, at least theoretically, effective at mid-year. This result could require two separate Benchmark to gas cost comparisons, covering two separate time periods, each time period being shorter than 12 months. However, as contemplated by the order approving the Program, the components of the Benchmark are calculated on a calendar year basis. Moreover, there are no provisions or procedures in the order or the Act defining how to calculate the components of the Benchmark for less than a 12 month period. Therefore, at a minimum, any post-review order issued by the Commission requiring other than year-end revisions to the Program would have to delineate modifications to calculation of the Benchmark's components to accommodate

periods of less than 12 months, as well as specifying the months to be covered in the time period. In addition to being unnecessarily complex, the Company believes that such an approach could be unworkable and extremely subjective.

Moreover, as explained above, the Commission-determined Benchmark components are inherently based on calendar year periods. Absent a declaratory ruling that any changes ordered by the Commission and accepted by the Company will be effective January 1, 2003, a post-review order issued by the Commission in mid-year could result in future Benchmark to gas cost comparisons covering a non-calendar year period beginning with issuance of the order, as opposed to a calendar year calculation period.

B. Recalculation of Benchmark Components

As noted above, several Commission-determine Benchmark components are inherently based on calendar year data, and a reduction in the number of months reflected in their calculation would, at a minimum, greatly complicate the matter or, under a worst-case scenario, make the Benchmark components meaningless. For example, under the Commission's order in Docket No. 99-0127, the Firm Deliverability Adjustment is, by definition, an annual amount. This Benchmark component cannot be meaningfully prorated over less than an annual time period because it is the sum of 12 individual months that have varying firm delivery costs and credits associated with them.

Likewise, the Storage Credit Adjustment is based on calendar year storage withdrawals, and the Storage Credit Rate used in calculating the Storage Credit Adjustment uses a calendar year winter/summer price differential. For this reason, it would be inconsistent with the original intent of the Program to calculate a Storage Credit

Adjustment that does not reflect a full cycle of injections and withdrawals over a calendar year period.

C. Adverse Impacts of a Partial Year Program

As explained above, the Company believes that it would be in the best interests of both Nicor Gas and its customers for the existing Program to be allowed to operate without change throughout calendar year 2002, with any post-review change ordered by the Commission and accepted by the Company effective January 1, 2003, for the following reasons:

First, actual gas costs used for comparison purposes in measuring Program results are the costs included in calendar year annual PGA reconciliations, for which well established procedures exist. Comparing the Benchmark components with actual gas costs for a period other than a calendar year would require various subjective PGA accounting estimates, particularly with respect to storage activity. Use of subjective estimates could have a significant impact on PGA gas cost calculations and, therefore, on Program results themselves. If the Program is allowed to operate without change for all of 2002, however, there will be no need for any subjective estimates.

Second, many of the benefits (or potential detriments) resulting from the Program could occur in the final quarter of the year because use of an annual period fully recognizes the impact of storage inventory strategies and capacity release values. The Company employs storage strategies based on a complete cycle of storage injections and withdrawals over a full 12 month period, and measurement over a shorter period of time could unreasonably skew Program results.

Third, the Company's hedging transactions often involve matching financial positions with physical transactions. Modifying the existing Program before the end of 2002 could distort the impact of hedging, since it might not be possible to match the offsets in the same Program period.

Finally, if the Commission's post-Program review order were to modify the Program effective as of the date of the order, or shortly thereafter, the Company might not have a reasonable opportunity to evaluate and assess the new Program's design. Allowing the existing Program to operate for all of 2002 would help to eliminate this potential problem.

V. CONCLUSION

WHEREFORE, Nicor Gas requests that the Commission issue a declaratory ruling on an expedited basis and, in any event, prior to September 1, 2001, without hearing that (1) existing Rider 4, Gas Cost Performance Program for gas supply costs, will remain in effect without change throughout calendar year 2002, or (2) any changes ordered by the Commission and (i) accepted by the Company will be effective January 1, 2003 or (ii) not accepted by the Company, that measurement of Program results will continue without change through December 31, 2002, with the results prorated over the number of full months in 2002 the Program was in effect prior to entry of the Commission's post-review order.

Respectfully submitted,

NORTHERN ILLINOIS GAS COMPANY
d/b/a Nicor Gas Company

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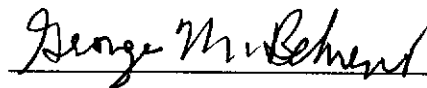
(312) 782-0600

Nicor Gas Company
Exhibit C

STATE OF ILLINOIS)
COUNTY OF DUPAGE)

VERIFICATION

George M. Behrens, being first duly sworn upon oath, states that he is a Vice President of Northern Illinois Gas Company, d/b/a Nicor Gas Company; that he has read the foregoing Request for Declaratory Ruling by him subscribed and knows the contents thereof; and that the statements therein contained are true to the best of his knowledge and belief.



George M. Behrens

Subscribed and sworn to
before me this 8th day
of June, 2001.


Notary Public

CERTIFICATE OF SERVICE

I, Angela D. O'Brien, an attorney, hereby certify that I caused copies of the foregoing Request for Declaratory Ruling to be served on all parties listed on the attached service list by United States Mail, First Class, postage prepaid, on this 8th day of June, 2001.

Angela D. O'Brien

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